JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1967

No. 70

ALITALIA-LINEE AEREE ITALIANE, S.P.A.,

Petitioner,

—v.—

JOHN LISI, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION OF THE REPUBLIC OF ITALY FOR LEAVE TO INTERVENE AS *AMICUS CURIAE* AND BRIEF IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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The Republic of Italy moves this Honorable Court for leave to file the attached brief as *amicus curiae* in support of the petition for a writ of certiorari in this case.

Counsel for the petitioner have consented to the filing of this brief, but counsel for respondents has refused consent. Accordingly, this motion is brought pursuant to Rule 42.

The Republic of Italy is a High Contracting Party to the Convention for the Unification of Certain Rules Relating to International Transportation by Air, concluded at Warsaw, October 12, 1929 (commonly referred to as the Warsaw Convention).[1] Representatives of the Government

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[1] 49 Stat. 3000, *et seq.*; T.S. 876.

of Italy participated in the drafting of this Treaty, and Italy was one of the original signatories to the Treaty. The Republic of Italy has been a party to this Treaty together with the United States continually since the Treaty came into force as to the United States on October 29, 1934.

The decision of the United States Court of Appeals for the Second Circuit, review of which is sought in this Court by petitioner, is inconsistent with the mutual commitments assumed by the Governments of Italy and the United States as expressed in the Treaty. If the said decision remains unreversed by the Supreme Court, it is the conviction of the Republic of Italy that the scheme of the Warsaw Convention will be effectively defeated.

These views of the Republic of Italy were officially made known to the Secretary of State of the United States by a Note from the Ambassador for the Republic of Italy dated April 1, 1967, ref. 02772.

Having been advised that these views have not been brought to the attention of this Court by the United States, the Republic of Italy feels constrained to petition this Court for leave to intervene as *amicus curiae* herein.

Respectfully submitted,

ALFRED C. CLAPP
Counsel for the Republic of Italy

CLAPP & EISENBERG
Of Counsel

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BRIEF OF THE REPUBLIC OF ITALY IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

The Republic of Italy respectfully submits this brief as *amicus curiae* in support of the petition for a writ of certiorari herein, to review the decision and judgments of the United States Court of Appeals for the Second Circuit entered December 16, 1966, 370 F.2d 508.

I

The Court of Appeals has achieved a result in direct conflict with the intent of the High Contracting Parties to the Warsaw Convention, as clearly expressed therein. The parties to the Treaty expressly limited the imposition of the sanction of unlimited liability to cases where no passenger ticket was delivered.[1] The extension of this

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[1] 49 Stat. 3015.

sanction to cases where the passenger ticket delivered fails to contain a statement that the transportation is subject to the liability rules of the Convention, was expressly considered and rejected by the drafters of the Convention, which included the Republic of Italy.[2]

II

The decision of the Court of Appeals is completely at variance with the understanding of the Republic of Italy as to its commitment to the United States as expressed in the Treaty. The decision is also at variance with the apparent understanding of the United States as to its commitments as expressed in the Treaty. In 1955 the Government of the United States took the position that an amendment of the treaty would be required if the sanction of unlimited liability were to be extended to cases where the passenger ticket fails to notify the passenger of the applicability of the liability rules of the Convention.[3] The Court of Appeals, however, has now unilaterally declared the existence of such sanction in the unamended Treaty.

CONCLUSION

The Republic of Italy respectfully submits that this decision presents issues of international importance, including the question of the extent to which the Courts of the United States can render judgments in direct conflict with the clearly expressed intent of the parties to a Treaty.

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[2] IIème Conférence Internationale de Droit Privé Aérien, ICAO Doc. 7838, pp. 100-101, 129, 168 (1930).

[3] I International Conference on Private Air Law, ICAO Doc. 7686-LC/140 p. 134 (1955).

These issues, therefore, should be decided finally by the Supreme Court of the United States.

Respectfully submitted,

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Counsel for the Republic of Italy

CLAPP & EISENBERG
Of Counsel

Certificate of Service

I hereby certify that I have, this 28th day of September, 1967, served the foregoing motion and brief upon petitioner and respondents, and upon the International Air Transport Association, the Air Transport Association of America, and the United States, *amici curiae*, by depositing same in a United States mail box at 744 Broad Street, Newark, New Jersey, with first class postage prepaid, addressed to the respective attorneys of record as follows:

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September 28, 1967

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